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17 Attorneys for Defendant Pacific NW, LLC

18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF ARIZONA

20 Jack Daniel, Individually and on Behalf of
21 All Others Similarly Situated,

22 Plaintiff,

23 No. 2:21-cv-02187-MTL

24 **JOINT MOTION FOR APPROVAL
OF SETTLEMENT**

25 v.
26 Pacific NW, LLC,

27 Defendant.

28 **JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**
AND FOR DISMISSAL OF THE COMPLAINT WITH PREJUDICE

29 Plaintiffs Jack Daniel (“Mr. Daniel”), James Morgan (“Mr. Morgan”), Miguel
30 Garcia (“Mr. Garcia”), Jacinto Mata (“Mr. Mata”), Dawson James (“Mr. James”) and James

1 Dionne (“Mr. Dionne”) (collectively, “Plaintiffs”) and Defendant Pacific NW, LLC
2 (“Defendant”), by and through respective counsel, jointly move the Court for approval of
3 the settlement agreement that resolves the claims in the Complaint alleging violation of the
4 Fair Labor Standards Act (“FLSA”) and upon such approval, for the dismissal of the
5 Complaint with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

6
7 As grounds for the motion, the parties joint state the following:
8

9 1. This is an action filed under the Fair Labor Standards Act (“FLSA”), 29
10 U.S.C. § § 201, et seq., in which Mr. Daniel seeks recovery for overtime wages allegedly
11 due to him as a result of being paid on a “piece rate” basis. The case was certified as a
12 collective action and five other Plaintiffs opted into the case. Defendant denied Plaintiffs’
13 allegations and disputes their entitlement to damages.
14

15 2. In particular, Defendant asserts that Plaintiffs’ claims regarding the hours
16 allegedly worked by each of them is the subject of a good faith dispute. Defendant contends
17 that several contested issues of fact and law would need to be litigated and resolved in this
18 matter relating to damages.
19

20 3. The Parties have executed an Agreement wherein they have agreed to the
21 dismissal of this action with prejudice. A copy of the Agreement is attached hereto as
22 Exhibit A.
23

24 4. Unlike most private settlements negotiated between parties in a civil action
25 for damages, in a FLSA case, the parties must “seek the district court’s approval of the
26 settlement’s terms to ensure that it is enforceable and fair.” *Juvera v. Salcido*, 2013 WL
27 6628039, at *3 (D. Ariz. 2013) (citations omitted). In deciding whether to approve the
28

1 parties' settlement, courts in the Ninth Circuit follow *Lynn's Food Stores, Inc. Villarreal v.*
 2 *Caremark LLC*, 2016 WL 5938705, at *2 (D. Ariz. May 10, 2016); *Lopez v. Arizona Pub.*
 3 *Serv. Co.*, 2010 WL 1403873, at *1 (D. Ariz. Jan. 27, 2010). In *Lynn's Food Stores, Inc.*,
 4 the Eleventh Circuit held that court approval is required for settlements of claims brought
 5 under the FLSA pursuant to 29 U.S.C. § 216(b). *Lynn's Food Stores, Inc. v. United States*
 6 *Department of Labor*, 679 F.2d 1350, 1354-55 (11th Cir. 1982). At the conclusion of the
 7 mediation held by the Honorable John Z. Boyle, the parties were instructed to follow the
 8 traditional process of seeking court approval of the settlement. Counsel for the Parties are
 9 aware of the recent decision from this District in *Evans v. Centurion Managed Care of*
 10 *Arizona LLC*, CV-23-00282-PHX-DWL in which the Honorable Dominic W. Lanza ruled
 11 that such approval is not required by the FLSA. This motion is filed to comply with the
 12 order from Magistrate Boyle while also acknowledging the ruling in *Evans*.

16 5. To be approved, an FLSA settlement agreement must constitute a "fair and
 17 reasonable resolution of a *bona fide* dispute." *Quintana v. HealthPlanOne LLC*, No. CV-
 18 18-02169-PHX-RM, 2019 WL 3342339, at *1–2 (D. Ariz. July 25, 2019); *Quiroz v. City of*
 19 *Ceres*, No. 1:17-CV-00444-DAD-BAM, 2019 WL 1005071, at *2 (E.D. Cal. Mar. 1, 2019)
 20 (citing *Dunn v. Teacher's Ins. & Annuity Ass'n of Am.*, No. 13-CV-05456-HSG, 2016 WL
 21 153266, at *3 (N.D. Cal. Jan. 13, 2016)); *see also Lynn's*, 679 F.2d at 1352–53. To find a
 22 bona fide dispute, "[t]here must be 'some doubt . . . that the plaintiffs would succeed on the
 23 merits through litigation of their [FLSA] claims.'" *Quintana*, 2019 WL 1005071, at *1
 24 (*quoting Selk v. Pioneers Mem. Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal.
 25 2016)).

28

1 6. The Parties have established the existence of a *bona fide* dispute; namely,
2 Plaintiffs alleged that Defendant violated the FLSA because it failed to pay them overtime
3 compensation due to them as non-exempt employees. Plaintiffs understand that success in
4 litigation is not a certainty and legitimate disputes existed as to the hours worked by the
5 Plaintiffs. Accordingly, there was a *bona fide* dispute between the Parties that is fully
6 resolved by the proposed Agreement. Moreover, approval of the Agreement will promote
7 the policy of encouraging settlement of litigation. *See Selk*, 159 F. Supp. 3d at 1175.
8

9 7. The settlement provides for meaningful compensation that is well within the
10 possible range of recovery. The Parties undertook written discovery, including document
11 production, to meaningfully determine the strength of the Plaintiffs' claim for unpaid
12 overtime wages and applicable settlement values, and there has been no fraud or collusion
13 between the Parties. The Honorable John Z. Boyle conducted a mediation with the Parties
14 which led to this settlement. The Parties have carefully negotiated in good faith to resolve
15 Plaintiffs' claims in order to achieve a fair and reasonable compromise of the disputed
16 issues of law and fact in order to fully and finally resolve their claims against Defendant.
17

18 8. Although denying any liability, solely for the purpose of resolving the matter,
19 Defendant has agreed to pay a total of \$40,000.00 (less applicable taxes and withholdings)
20 for the disputed overtime at issue and Plaintiffs' attorney fees and costs.
21

22 9. Under the terms of the Agreement, each Plaintiff is receiving an amount in
23 excess of their alleged unpaid wages as calculated by Plaintiffs' counsel.
24

25 10. Further as part of the settlement, Defendant agreed to pay Plaintiffs' attorneys
26 fees in the amount of \$18,450.00. Such fees were negotiated by the parties at arm's length
27
28

1 and therefore carry a presumption of reasonableness. *See In re First Capital Holdings Corp.*
2 *Financial Products Securities Litigation*, MDL No. 901, 1992 WL 226321, at *4 (C.D. Cal.
3 June 10, 1992).

4
5 11. To the extent the Court wishes to determine the reasonableness of the fees
6 and costs agreed, Plaintiffs' counsel avers that they are reasonable. Plaintiffs' counsel has
7 incurred 146.4 hours billed to this matter, at a blended rate of \$219.23, taking this case from
8 initial fact investigation to Complaint drafting through discovery and damages calculations,
9 to settlement negotiations and finalization. In addition, Plaintiffs' counsel has incurred case
10 costs of \$1,140.20. At approximately just 55% of the fees and costs accrued, the fee amount
11 is reasonable.

12
13 12. Both Plaintiff and Defendant, through their respective counsel, represent to
14 the Court that the Agreement is fair, equitable and in compliance with the policies of the
15 FLSA.

16
17 13. All parties were represented by competent counsel with experience in this
18 area of the law.

19
20 Accordingly, the parties jointly request that the Court review the Agreement and
21 enter an Order approving the Agreement and dismissing this matter with prejudice, with
22 each party to bear his own fees and costs, except as otherwise expressly provided in the
23 Agreement.

24
25 DATED September 19, 2023,

26
27 s/ Sean Short
28 Attorney for Plaintiffs

s/ Michael Curran
Attorney for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that, on this 19th day of September, 2023, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants, and by email and/or U.S. First Class Mail if non-registrants:

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/s/ Michael Curran
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